Editor's note: overruled to the extent inconsistent with Matilda Titus, 92 IBLA 340 (June 30, 1986)

PETER ANDREWS, SR. (ON RECONSIDERATION)

IBLA 83-870 Decided November 7, 1984

Petition for reconsideration of Peter Andrews, Sr., 77 IBLA 316 (1983).

Petition granted; 77 IBLA 316 reaffirmed.

1. Alaska: Native Allotments -- Alaska National Interest Lands Conservation Act: Generally -- Alaska Native Claims Settlement Act: Generally -- Patents of Public Lands: Effect

   The Department lacks jurisdiction to adjudicate the rights of claimants to land after it is patented. Although a hearing in the Department may be required where land is patented in derogation of the rights of a conflicting applicant, a hearing is inappropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for such applications has been repealed.

APPEARANCES: David C. Fleurant, Esq., Anchorage, Alaska, for appellant; John M. Allen, Esq., Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management; Randall Simpson, Esq., for Village and City Council of Aleknagik.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

By request filed January 30, 1984, Peter Andrews, Sr., petitioned for reconsideration of the Board's decision styled Peter Andrews, Sr., 77 IBLA 316 (1983). 1/ In that decision, we reviewed his appeal of the

1/ It is difficult to determine from the request for reconsideration whether petitioner desires the Board to reconsider its November 1983 decision, which, pursuant to 43 CFR 4.21(c), it has the authority to do, or whether petitioner desires that the Director, Office of Hearings and Appeals, review the Board's decision under authority reserved to him by 43 CFR 4.5(b). Counsel's pleading is styled "Request for Reconsideration" but it requests that the "Director * * * reconsider the Board's decision * * * pursuant to 43 CFR 4.21(c)." Inasmuch as reconsideration language is employed and the only body which has issued a decision eligible for reconsideration is the Board of Land Appeals -- coupled with the fact that petitioner cites to the general reconsideration regulation which governs such requests before the Board (43 CFR 4.21(c)) instead of the Director's enumerated review powers (43 CFR 4.5(b)), the Board has assumed jurisdiction of this case.

June 29, 1983, decision of the Alaska State Office, Bureau of Land Management (BLM), denying reinstatement of his Native allotment application, A 054486, because he had knowingly and voluntarily relinquished the application on September 29, 1966, and therefore could not be afforded the benefits of section 905 of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634 (1982). 2/

Upon review of the record, the Board found that conflicting allegations of petitioner and BLM gave rise to an issue of material fact as to whether the relinquishment was knowing and voluntary, and ordered that an evidentiary hearing be held. We also found, however, that certain of the lands embraced by petitioner's application had been conveyed to a Native Village Corporation corporation or patented to a townsite trustee 3/ and that, as to those lands, BLM's decision must be affirmed, reciting the principle that the Department no longer retains jurisdiction over land once it has been conveyed or patented (see Germania Iron Co. v. United States, 165 U.S. 379 (1897); Appeal of Chickaloon Moose Creek Native Association, 4 ANCAB 250, 87 I.D. 219 (1980)). We noted the narrow exception to the rule where patent has issued in error in violation of the rights of a party claiming entitlement to the land through the United States. (See Dorothy H. Marsh, 9 IBLA 113 (1973), and the holding in Aguilar v. United States, 474 F. Supp. 840 (D. Alaska 1979), that a hearing to determine the rights of a Native allotment applicant may be required where land is patented in derogation of the rights of a conflicting applicant.) We concluded, nevertheless, that a hearing is inappropriate where at the time of patent the conflicting application has been relinquished and the statutory authority for Native allotment applications was repealed by section 18 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1617 (1976).

Petitioner urges reconsideration of that part of the Board's decision relating to the above conclusion as to the patented lands. He asserts that the Board's decision was incorrectly based on the premise that BLM had no authority to entertain his application until the passage of ANILCA, thereby resulting in the Board's erroneous conclusion that petitioner had no viable Native allotment application "from repeal of the Native Allotment Act through the time of the patent to the townsite trustee and the interim conveyance to the Native village under ANCSA." 77 IBLA at 319. Petitioner contends that ANILCA did not establish the authority for BLM to consider the validity of a relinquishment, but merely reaffirmed longstanding common-law principles which have governed the validity or invalidity of relinquishments. Therefore, petitioner argues, the Board's failure to consider BLM's ever-present

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2/ Section 905 of ANILCA, 94 Stat. 2435, provided statutory approval "subject to valid existing rights" of Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended). This approval was subject to certain exceptions and did not apply to "any application pending before the Department of the Interior on or before Dec. 18, 1971, which was knowingly and voluntarily relinquished by the applicant." Section 905(a)(6), 94 Stat. 2436 (emphasis added).

3/ BLM conveyed a substantial part of the land embraced in petitioner's application on Feb. 15, 1980, to the Native Village Corporation, Aleknagik Natives, Limited, by Interim Conveyance No. 286. BLM patented tracts A and B within United States survey No. 4873 to the townsite trustee in patent No. 50-77-0073.

ability to determine a relinquishment's validity, as well as the proposition that a relinquishment not properly obtained or given is void ab initio, combine to require reversal of the Board's initial decision. Petitioner contends that if his relinquishment is found to have been ineffective, he has a prior right to all land embraced by his application. Thus, he submits the interim conveyance and patent were issued in error and the Department has the obligation to correct the error. In response, BLM urges that we reaffirm our decision.

We hereby grant the petition for reconsideration.

[1] Upon review of this case, we note again that section 905 of ANILCA, supra, provided statutory approval "subject to valid existing rights" of Native allotment applications made pursuant to the Act of May 17, 1906 (34 Stat. 197, as amended). This approval was subject to certain exceptions and did not apply to "any application pending before the Depart- ment of the Interior on or before Dec. 18, 1971, which was knowingly and voluntarily relinquished by the applicant." Section 905(a)(6) of ANILCA (43 CFR U.S.C. § 1634(a)(6) (emphasis added). Subsequent to the passage of ANILCA, BLM and BIA reviewed their records to determine all Native allot-ment applicants who may have relinquished all or part of their claims. The purpose of this review was to find those relinquishments which were not "knowingly and voluntarily relinquished" because those applications had been legislatively approved by section 905 of ANILCA. The BLM review revealed that petitioner, Peter Andrews, Sr., relinquished his application on September 29, 1966. It also showed, however, that petitioner had requested reinstatement of his Native allotment application by letter dated August 23, 1976, which was denied by the BLM State Office in Anchorage, Alaska, by letter dated November 19, 1976. Notwithstanding this denial, BLM "reinstated" the application in 1981 pending a review of Andrews' relinquishment in light of ANILCA. The BLM decision and petitioner's appeal followed.

With respect to petitioner's assertion that the Board failed to adjudicate the validity of the subject relinquishment under applicable common-law principles, we note the following. First, under this rationale, petitioner would be precluded from any hearing whatsoever. As previously noted, after petitioner requested reinstatement of his allotment application in 1976, the record shows that the BLM denied the request on November 19, 1976. Petitioner did not appeal the reinstatement denial. Any claim of the applicability of common-law principles to a determination of the validity of relinquishments should have been raised on an appeal of the 1976 BLM reinstatement denial. Since it was not, the BLM denial became final and petitioner is barred from raising such arguments now. Second, it is clear that petitioner's opportunity for reinstatement of his Native allotment application is revived solely because of BLM's interpretation of ANILCA, rendered June 29, 1983, which gave rise to an appeal therefrom and the Board's November 30, 1983, decision.

Petitioner also argues, citing Estate of Guy C. Groat, Jr., 46 IBLA 165, 173 (1980), that an invalid relinquishment is void ab initio and that such a relinquishment is "not valid up through the time it is proven to be invalid" (see Memorandum in Support of Request for Reconsideration at 4). Under petitioner's reasoning, if his relinquishment is found to have been unknowingly and involuntarily given in 1966, it was void in 1966, and he has a prior right to all land included in his application. Thus, he contends the

interim conveyance and patent were issued in error and the Department has the obligation to correct the error.

Groat, supra, does not stand for the broad proposition that petitioner suggests; it has a unique factual situation which limits its application. The Groat relinquishment was flawed on its face because it was not signed by Groat. It was signed by Groat's widow, who was not authorized to relinquish Groat's Native allotment application. She then filed an allotment application of her own for the same land. It was her application which the Board found null and void ab initio. As to the widow's "relinquishment" of Groat's application, the Board concluded that "there was no relinquishment of the Groat allotment * * *," id. at 173, and that "BLM had no authority to accept relinquishment * * * under the circumstances of this case." Id. at 174 (emphasis added). Moreover, the land at issue in Groat had not been conveyed but was merely embraced in a conflicting Native allotment application. See and compare Pearla (Michele) Holmes LaFleur, A-29328 (July 15, 1963) (homestead entry relinquishment).

That is not the situation in the case before us. Here, on its face, the relinquishment of petitioner in 1966 was effective. After the relinquishment, section 18a of ANCSA, 43 U.S.C. § 1617(a) (1982), repealed the Native Allotment Act subject to pending applications. Although petitioner made a request in 1976 to have his Native allotment application reinstated, BLM denied his request, the decision was not appealed, and the case was closed on petitioner's application. A patent on March 4, 1977, and an interim conveyance on February 15, 1980, were issued for lands that had been encompassed by the Native allotment application relinquishment. We can find no authority for reinstating an application for land previously relinquished which has since been conveyed.

Dorothy H. Marsh, supra, which involved apparent fraud or misrepresentation and Aguilar v. United States, supra, which involved a pending, unadjudicated Native allotment application and a State selection, are distinguishable and do not support affording petitioner a hearing as to the patented lands. In a case such as this, where Federal officers have acted within the scope of their authority, a patent for lands, once issued, passes the land beyond the control of the executive branch of the Government. United States v. State of Washington, 233 F.2d 811 (9th Cir. 1956); Dorothy L. Standridge, 55 IBLA 131, 135 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 30, 1983, decision in Peter Andrews, Sr., is reaffirmed.

Wm. Philip Horton
Chief Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge

ADMINISTRATIVE JUDGE IRWIN CONCURRING IN PART AND DISSENTING IN PART:

I, too, would grant the petition for reconsideration, but I would do so because I believe the Board's original decision erroneously concluded that a hearing was warranted on the question of whether Andrews' relinquishment was knowing and voluntary as to the lands not already patented or conveyed. I believe that for two reasons: (1) there is no evidence of record that indicates Andrews' relinquishment was not knowing and voluntary; and (2) I can find no authority for the Bureau of Land Management's (BLM's) "reinstatement" of Andrews' Native allotment application in 1981.

On September 17, 1966, Peter Andrews signed his relinquishment of the 160 acres he had applied for, and noted on the relinquishment form "I will obtain ___ [acres] of this land in the Mosquito townsite" that included his residence. (He described the number of acres involved as "[t]hat area enclosed within the boundaries of a tract of land extending 250' from both sides of my house and from the lake to the edge of the swamp. See attached map.") From the record it is evident that he relinquished his claim as part of a process of accommodating several conflicting claims in the area, including a townsite petition. Two contemporaneous reports confirm this. The first is a report of Realty Specialist Alfred P. Steger dated October 5, 1966, which reads in part:

> On September 17, 1966, Bristol Bay Area Manager, Sherman Berg, Realty Specialist, Darryl Fish and I left Dillingham at 9:00 a.m. via rented automobile and arrived at Lake Aleknagik at 10:30 a.m. to meet with residents of the proposed townsite.
>
> We rented a small motorboat and crossed a narrow portion of Lake Aleknagik to the location of the village, which lies along the lake shore from Mosquito Point.
>
> The people we talked to about the proposed townsite were the following:
>
> Peter Andrews Townlot Claimant
>
> * * * * * * *
>
> Our first stop was at the house of Peter Andrews, who had of record a 160 acre Native Allotment claim which covered a considerable portion of the land described in the townsite petition. The house was framed, well built, and well furnished.
>
> Mr. Andrews was aware of the townsite petition but he did not seem to realize that his native allotment claim embraced some houses belonging to other native villagers. He was entirely in favor of the townsite petition, and when Area Manager Berg explained the townsite plan to him, he freely decided to relin-quish his allotment. He designated on an aerial photo of the area the boundaries of the tract he wished to acquire under the

townlot regulations. This tract covers 500 ft. of lake shore and runs back several hundred feet from the shore to the edge of a swamp.

Mr. Andrews' decision to proceed under the townsite regulations with the other villagers, removes the former conflict between the townsite area and his allotment.

The second report is a memorandum dated the same date as Andrews' relinquishment by Sherman Berg, Bristol Bay Resource Area Manager:

Pavela Chuckwuk and Peter Andrews were contacted individually at Mosquito Point early in the afternoon on this date [September 17, 1966] and the status situation in the area was discussed with them.

Darryl Fish and Al Steger accompanied me on the trip.

After I explained the current status, both individuals stated they wanted to relinquish their allotment applications and proceed to title under the provisions of the townsite act.

I was very careful to explain their rights to them, especially the fact that they could proceed under their Allotment Applications, and I was careful to ascertain that they fully understood the situation that would exist if they relinquished them.

Andrews realized that he would be reducing the size of the area that he would eventually get "title" to in this area. I explained to him that he could re-file for a Native allotment in any area that was available.

The area he wants to proceed to title to under the allotment act has not, at the moment of writing of this memo, been described in terms of metes and bounds, but it has been sketched on the mosaic photo which has been made part of the townsite casefile.

The area he wants is a tract of land approximately shown below: [The diagram corresponds to the description given by Andrews on the relinquishment form.]

Andrews' August 23, 1976, letter sets forth the circumstances of his relinquishment as well as his reasons for wishing his "original application restored":

Dear Sir,

The city council here at Aleknagik made plans to make a resolution to disolve [sic] the pending townsite North Shore Aleknagik. If this resolution goes through I would like to

> retain the land I applied for before the proposed townsite was planned. I had applied for 160 acres and had received a number for it, but the copy of the paper I received from your office has been misplaced and cannot be found. I hope that you have a record of that in your office. I cancelled my application in favor of the proposed townsite which never came through. And since the council here wish to resolve [sic] the townsite application, I would like to have my original application for the 160 acres restored. I have not applied for no other land, and since some people have been applying for land and I understand that we can't stop them from doing so, I want to re-apply for the land where we are living now. As it is now if all the land is grabbed all around my house our children will have to go somewhere else for land.

After his "reinstated" allotment application was rejected on June 29, 1983, Andrews stated in his July 23, 1983, notice of appeal:

> I did not voluntarily relinquish my allotment. I did this against my will and my wife Sassa. The two people from the BLM that came to us promised that if we relinquished our allotment we would be able to get another land. We did not hear from them after that. * * * I repeat again that I did not relinquish my allotment voluntarily, but believing the promise made to me for other land.

It seems clear from this record, including the statements in his notice of appeal, that Andrews did relinquish his Native allotment claim voluntarily in 1966 but later reconsidered the wisdom of having done so, after his opportunity for filing another allotment claim had been repealed by the passage of section 18 of the Alaska Native Claims Settlement Act (ANCSA) on December 18, 1971. And, indeed, the Board's November 30, 1983, decision states that Andrews "relinquished his Native allotment application in 1966." Peter Andrews, Sr., 77 IBLA at 319. Even so, it concludes: "With respect to those lands in appellant's application which have not been patented, we find that the conflicting allegations of appellant and of BLM give rise to an issue of material fact as to whether the relinquishment was knowing and voluntary" and ordered a hearing as to those lands. Id. No basis for finding an issue of material fact or for distinguishing between the lands not patented and those that were, when all were covered by the application that was relinquished, is provided in the decision.

Similarly, the Board's decision recites that because of the enactment of section 18 of ANCSA repealing the Native Allotment Act "BLM was correct when it responded to appellant's request to reinstate the application in 1976 that it had no authority to consider his allotment application." Id. at 319. If this was true in 1976, as it was, it was equally true in July 1981 when BLM attempted to "reinstate" the application, and for the same reason, namely, because Andrews had no application pending on December 18, 1971, because he had knowingly and voluntarily relinquished it in 1966.

Thus, I conclude both as a matter of law and a matter of fact that the BLM decision of June 29, 1983, should be affirmed and the Board decision of November 30, 1983, should be vacated to the extent it does not do so.

Will A. Irwin
Administrative Judge

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